

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA AT ELKINS

**FRIEDRICHSHARRIS, ADMINISTRATOR OF
THE ESTATE OF EVAN M. HARRIS,**

Plaintiff,

v.

**CIVIL ACTION NO.: 2:16-cv-00046
JUDGE BAILEY**

**Q&A ASSOCIATES, INC.,
ANGELA SHOCKLEY, KEITH BISHOP,
MATTHEW SHOCKLEY, SANDY
SCHMIEDEKNECHT, and TAMMY ROBBINS.**

Defendants.

**DEFENDANTS' MOTION IN LIMINE TO EXCLUDE EVAN M. HARRIS' TREATING
PHYSICIANS FROM PROVIDING EXPERT TESTIMONY AT TRIAL**

COME NOW Defendants, Q&A Associates, Inc., Angela Shockley, Keith Bishop, Matthew Shockley, Sandy Schmiedeknecht, and Tammy Robbins (hereinafter collectively "Defendants"), by counsel, and moves this Court, *in limine*, to prohibit Evan M. Harris' former treating physicians from offering at trial any testimony outside of the treatment they provided to him. "Treating physicians must be identified as expert witnesses but courts usually hold that, to the extent their testimony is based on their own diagnosis and treatment, they are not 'retained or specially employed' to render opinion testimony nor are they employees of the plaintiffs whose duties involve giving expert testimony." *Wagner v. St. Paul Fire & Marine Ins. Co.*, 2007 WL 1381519 at *2 (N.D.W.Va. 2007). See also *Hall v. Sykes*, 164 F.R.D. 46, 48-49 (E.D.Va. 1955) (if a treating physician "is specially retained or employed to render a medical opinion based on factors that were not learned in the course of the treatment of the patient, then such a doctor would be required to present an expert written report").

Any opinions offered by Evan Harris' treating physicians that are akin to an expert opinion will carry no probative value, and the value of such information will be substantially outweighed by the danger of unfair prejudice to the Defendants. FED. R. EVID. 403; *U. S. v.*

Hernandez, 975 F.2d 1035, 1041 (4th Cir. 1992); *Lively v. Rufus*, 533 S.E.2d 662, 675 (W. Va. 2000). Evan Harris' treating physicians' testimony should be limited to their factual observations within the course of the treatment they provided to Evan Harris and nothing more.

WHEREFORE, Defendants, Q&A Associates, Inc., Angela Shockley, Keith Bishop, Matthew Shockley, Sandy Schmiedeknecht, and Tammy Robbins, move this Honorable Court to grant its Motion *in limine* and prevent Evan Harris' treating physicians from offering expert opinions at trial, along with any further relief this Court deems necessary.

DEFENDANTS,

By Counsel

/s/ Lindsey M. Saad

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**Q&A ASSOCIATES, INC., A WEST VIRGINIA
CORPORATION, ANGELA SHOCKLEY, KEITH
BISHOP, MATTHEW SHOCKLEY, AND SANDY
SCHMIEDEKNECHT, and TAMMY ROBBINS.**

Defendants.

CERTIFICATE OF SERVICE

I certify that on this 7th day of May, 2018, I filed electronically via CM/ECF a true copy of "**DEFENDANTS' MOTION IN LIMINE TO EXCLUDE EVAN M. HARRIS' TREATING PHYSICIANS FROM PROVIDING EXPERT TESTIMONY AT TRIAL**" with notice of the same being electronically served by the Court to the following:

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/s/ Lindsey M. Saad
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